Securities and Exchange Commission Historical Society
Interview with Eric Roiter
Conducted on June 22, 2016 by William Thomas

WT: This is an interview with Eric Roiter for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas. The date is June 22, 2016, and we're at the Boston University Law School. Thank you very much for agreeing to speak with us. Why don't we start with a little bit of personal background, where you came from and a little bit about your education as well?

ER: Thank you, and it's a pleasure to be here. Well, I was born here in Boston, actually, Newton, Massachusetts, a suburb of Boston. I grew up, however, in Newport, Rhode Island. My father was a pharmacist and went to Newport to have a family pharmacy, and it was a wonderful place to grow up as a child and a young adult. I went to the University of Rhode Island, and then went to Georgetown Law School, and later got a LL.M. from Georgetown Law School.

I began my career in a small law firm in Washington, DC, not with the idea of staying but with the idea of leaving. I really had become very interested in securities law, and thought that the best place to be as a young securities lawyer would obviously be the SEC, and I was fortunate to be able to obtain a position at the SEC early in my career as a lawyer, and I spent the years of 1976 to 1981 at the SEC, which was then on North Capital Street, first in the Division of Market Regulation, which now is the Division of Trading and Markets. That's where I spent my first two years. And then from 1978 until 1981, I was in the Office of General Counsel.

WT: So before you get along too far in the story, maybe I can go back and ask a little bit about, first, what you studied as an undergraduate. That's always kind of interesting to hear.

ER: I was an English major, and I thought I would go on and get a master's, perhaps a Ph.D., in English literature. But I always thought as well that I might well go to law school, and that, in fact, was my choice. And I have been happy about that decision ever since.

WT: So what sent you down to Georgetown in Washington?

ER: Well, a couple of things. First of all, it was a school that I thought, among the schools that accepted me, was the best school among those who did accept me, so that was far and away the reason why I went to Georgetown Law School. So it's fortuitous, as many things in life are. So I, a native New Englander, went to Washington, DC, and to me, going to Washington, DC, was like going to Argentina. It felt that far away for me. But after completing law school, I felt it was a very good place to stay because there were so many opportunities that would help me in advancing my career, notably the possibility of working for the SEC. So I got married the summer after graduating from law school, and my wife and I stayed in Washington.

WT: Did you develop your interest in securities then while you were at Georgetown?

ER: No, and surprisingly so. I thought I was going to be a criminal defense lawyer, and I was in a criminal justice clinic in my third year at law school. And we learn in our legal ethics classes, and more generally, that you need to zealously defend your clients, whoever they may be. And I came to the conclusion I really couldn't zealously defend people that I felt were guilty of crime, and I felt I better leave that to those who felt that they were capable of doing that.

At the same time, I was with a small practice in Washington that had a little bit of corporate and securities practice, and I found it very intellectually interesting, and I actually had not taken any securities law courses while in law school. Obviously, I took corporate law and tax. And I, on my own, got Louis Loss's treatise on securities law and read it from cover to cover, and that persuaded me that I really wanted to become a securities lawyer, and naturally, led me on to at least have the opportunity for a few years to work at the SEC.

WT: Did you have any awareness of Loss's ALI project that was going on around that time?

ER: Very much so. In fact, that occurred when I actually was at the SEC. I started in the Division of Market Regulation, and you might ask, "Were you particularly interested in market regulation?" My answer was, "Not particularly." I thought I wanted to be an enforcement lawyer, but there were no openings at the time that I was applying, and there was an opening at the Division of Market Regulation. And I really think this is a life lesson for everyone. That is, take the opportunities that are presented to you even though they are not the perfect opportunities. If they are at least proximate to the place you want to eventually wind up in, then take that opportunity. So I took the opportunity, went to the Division of Market Regulation, spent a couple of years there, and got an offer – Harvey Pitt was the general counsel at the time – to join the Office of General Counsel.

It was only after I got to the Office of General Counsel, and at that time Ralph Ferrara, who was later to become my law partner at Debevoise & Plimpton, was the general counsel, because I wasn't allowed to leave the Division of Market Regulation for about another eight or nine months after I got my offer. And that was the very time that the efforts of Louis Loss and many, many others to codify the securities laws were underway. So I didn't actually, in my position in the Office of General Counsel, spend any appreciable amount of my personal time on the project. Others did. My friend, first my colleague, Don Langevoort at Georgetown Law School, spent a great deal of his time doing that. But I was there and I saw that effort underway.

WT: When you were in Market Reg, what were you doing there?

ER: It turned out to be a fascinating two years. I really knew little about market regulation, but then that put me in the company of about 99.9 percent of not only all lawyers, but 99.9 percent of securities lawyers. I joined the SEC in the Division of Market Regulation in 1976 and spent '76 to '78 there and '78 through '81 in the General Counsel's Office. So 1976 was the first year after Congress had enacted the landmark Securities Acts

Amendments of 1975, and perhaps the primary thrust of those amendments was toward the establishment of a national market system.

So I was in the Division of Market Regulation when they were confronted with this challenge of figuring out how to take these broad purposes of the 1975 Amendments and translate them into operational actions to take what was a securities market dominated by the New York Stock Exchange and usher in competition across various securities markets and allow investors to try to find a way to get best execution for their transactions.

WT: Did you do other things? Was that the main thing that you were concentrating on, or were your tasks broader than that?

ER: Well, broader and narrower. The Market Regulation Division was divided into different branches. There was a branch devoted to the national market system, and I was not part of that. I was in a branch that was dedicated to the oversight of the national securities exchanges, first and foremost the New York Stock Exchange. I remember as if it were yesterday – but it certainly was not, it was decades ago – that my first assignment or almost my first assignment was to actually go to New York and conduct a one-person inspection of the New York Stock Exchange with regard to how they reviewed and approved advertising by their broker-dealer members. It was a very interesting and a little disorienting experience for me, because I was coming in fresh from the outside. I was given a little bit of guidance, but not that much, and I would just go up there and look at a lot of records, talk to a lot of people, and come back and write a memorandum that analyzes how well the New York Stock Exchange reviews the advertising that its members put out, because at that time, the Exchange had a rule that you had to submit any kind of advertising to the staff before you were able to use it.

WT: Did you find that having been at law school and being fairly familiar with how the law works, and knowing how an institution like the New York Stock Exchange works, is a fairly different set of skills?

ER: Well I felt it was a surreal experience in part, because I had never set foot in the New York Stock Exchange until I had gone on this inspection and I had no idea what to expect. In many ways, it struck me as a museum. It's more of a museum today than it was at that time, because so much trading did take place on the floor of the Exchange. But if anybody's ever been to the New York Stock Exchange, it's a very impressive building with lots of nooks and crannies, and I was given an office and people came in with carts of documents that I was to review.

I felt that I was learning as I was going, and the best way to learn is to keep a completely unfettered mind without any presumptions or suppositions, and simply try to organize in your own mind what you were trying to understand. As I say, it was a new experience for me, rather unstructured, and it taught me something really about any kind of organization. No matter how formal the organization looks from the outside, whether it's the SEC or whether it's Fidelity, where I spent many years, or whether it was my law firm, Debevoise & Plimpton, once you get inside an organization, it's not quite as rigid and highly structured as you might think. There's a lot of fluidity involved.

WT: So what were your main responsibilities then in the GC's Office?

ER: Because of the background I had developed in the Market Regulation Division, I was placed in that part of the General Counsel's Office that dealt with market regulation matters. And I have to take a step back now. So Ralph Ferrara has just become the general counsel, and Harold Williams was the general counsel, and Stanley Sporkin was the head of the –

WT: Harold Williams was the chairman.

ER: Chairman, yes. And Stanley Sporkin was the division director, or the division enforcement. And Sporkin had a great following among the press. I want to say media, but back then the media was the press. There was obviously no other type of media. And Chairman Williams – I'm getting this indirectly, not because of any direct conversation I had – wanted some counterweight to what the division enforcement was advocating, particularly when it came to questions of the law, because the division enforcement, at the risk of overstatement, was viewed as having the philosophy if there's something that's done that's untoward or not in keeping with the highest standards of morals and ethics, then it must violate the securities laws. But we know that there are imperfections in the securities laws, and for good reason we don't try to equate with precision laws and ethics.

So Chairman Williams wanted the General Counsel's Office to provide his independent view on the legal strength, and where they existed, the legal weaknesses of theories that the Enforcement Division might want to bring in the case of any litigation. But more broadly, whatever division of the SEC might be involved, Chairman Williams wanted the independent legal input of the General Counsel's Office. So we had a sort of a legal arrangement in the General Counsel's Office which sort of shadowed or mirrored the different divisions within the rest of the SEC, and given the existence of the Division of Market Regulation, I was placed in that part of the General Counsel's Office that looked at what the Division of Market Regulation was proposing or doing. Then of course if there was litigation coming out of rulemaking or other actions taken by the SEC that implicated market regulation, those matters would go to the part of the General Counsel's Office that I was in.

WT: So was there any particular issues at that time that stand out in your memory as things that occupied your time or that were especially significant?

ER: I think a few. One in particular was the struggle that was going on between the SEC and the Commodity Futures Trading Commission over who had jurisdiction over the trading of various types of options or futures that involved securities or indexes of securities, and that was an internecine dispute that lasted several years. And of course within the SEC, people knew the securities laws, but just because you were at the SEC didn't necessarily mean that you would know the commodities laws. In fact, almost no one did. But that didn't prevent almost everyone at the SEC from saying we should have jurisdiction over anything that we think we should have jurisdiction over, including options or futures on various instruments that happen to be traded not on the securities exchanges, but on the commodities boards of trade.

And so I sort of was the last man standing in the General Counsel's Office on questions arising under the commodities statutes, and I learned them. Well, I think I had a comparative advantage. I knew more about them than anybody else in the office. And so I worked with more senior lawyers in the General Counsel's Office to develop positions and to actually represent the SEC in litigation over this contentious question of whether it was the SEC or the CFTC that had jurisdiction over different instruments. The CFTC had a distinct advantage here because explicit in their statute was a grant of exclusive jurisdiction. The SEC had no comparable grant, explicit grant of exclusive jurisdiction over anything.

And so it, in a way, was a false question whether something happened to be a securities or a commodity if it answered to the definition of both a securities and a commodity. Given the CFTC's grant of exclusive jurisdiction over commodities, that meant the CFTC would win. So we had litigation in the Second Circuit, and we had various other venues in which we had to deal with the SEC's position and to counter the CFTC's position on those matters. So that certainly was one area that stood out in my years there.

WT: Were you still there when they ultimately came to what was called the Shad-Johnson?

ER: I was very much there. By this time, Ralph Ferrara had left, and in fact, Chairman Williams had left, and Reagan was now president, so we're now talking 1980 or maybe early 1981. And Ed Greene, a wonderful lawyer who had been the director of the Division of Corporation Finance, was named the general counsel. So I worked with Ed Greene on what became known as the Shad-Johnson Accord to have this Solomonic comprise between the SEC and the CFTC. It was a rather remarkable exercise. There was a lot of *Sturm und Drang* around the respective powers and authority of the two agencies, but Chairman Shad came in and Chairman Johnson of the CFTC came in and said, "Look, let's just see if we can figure something out that would work for each agency, and let's put aside the polemics and the rhetoric." And the two rather quickly came to some agreement, and we helped as the staff to show the way toward that agreement, and then we drafted legislation to implement it, and in fact, that legislation was implemented. And it was done over a relatively brief period of time, given the years that had preceded that resolution.

WT: Was the thinking at the time that that was going to prove stable, because of course I know then subsequent years, there were continuous conflicts between the agencies.

ER: Well, I don't think people were looking too far into the future.

WT: They were happy to get it done.

ER: So let's just solve the problems that are right with us. At that point, I think the commodities exchanges wanted to trade futures on stock indexes, and the compromise was, look, if it's a broad-based stock index like the S&P 500, okay, fine, you can do that. But we don't want you trading futures on single stocks. And so what was left in the middle, obviously, were indexes on narrow-based indexes, and the agreement was, no, you can't do that either if you're the CFTC. Only broad-based stock indexes should be the subject of futures trading. And we thought we were solving most of the problem at that point with that resolution.

WT: Okay, so what else was on the agenda then?

ER: I remember one other question was Bankers Trust was trying to make a mark for itself as a player in the commercial paper market. Some of these issues seem rather mundane now, but at that time, and again, we're talking something like 1980 or 1981, obviously way before the Gramm-Leach-Bliley Act, so Glass-Steagall is firmly in place, which proscribed securities firms, investment banking firms from underwriting securities, but said that investment banking firms, broker-dealers could act as brokers or agents for their customers.

Bankers Trust said we want to be private placement agents of commercial paper, and that was a dispute between the securities industry that said no, you can't do that, and the banking industry that said – and particularly Bankers Trust – yes, we can, we're just acting as broker. Our customer happens to be the issuer, but we're acting as agent, we're not acting as principal. And the SEC – this went to federal district court. We were asked to file an amicus brief, so I worked on the amicus brief on the question of whether commercial banks could act as private placement agents with respect to commercial paper.

We spent lots of time researching the Glass-Steagall Act, and we wrote an amicus brief, the details of which escape me at the moment. But the upshot was that the courts found – it ultimately went to the Supreme Court – that yes, the Glass-Steagall Act did not prohibit commercial banks from acting as private placement agents of commercial paper. So that was a big project that I was involved in.

WT: You had a lot of experience with these jurisdictional issues that –

ER: Yes.

WT: It must have been interesting later on to see how those developed twenty-plus years later.

ER: Right. And one of the nice things about working in the General Counsel's Office is you have to get your hands messy with the factual record that was basically developed before these questions of law got to you. You got basically the opportunity to take a factual record and then decide what are the proper rules of law to apply to it.

WT: So I don't know how far we want to keep going with the highlights of your time there, but please, by all means, if there's anything else that jumps out to you.

ER: Well, there were many other interesting projects. I would say in general that those years I spent in the General Counsel's Office I think really shaped my approach to the practice of law, because you were taught to be nimble, because issues came at you from every direction. And you may have little expertise or understanding of the particular questions of law that come to you, and it was your responsibility to look into those questions of law and do the research, come to some view, and then explain your position to others. So I thought it was fabulous training.

WT: So that was the last that you ever worked with a regulator, and so maybe you can sum up what you took away from that experience that helped you out in some of your later positions.

ER: Well, as I say, I think the greatest things I took away from the SEC were how to actually think like a lawyer. It sort of is helpful in that regard that your client says to you, look, we don't want to bend the law, certainly aren't going to break the law. You figure out what the law is and then you tell us what it is and evaluate the strength of our legal position. And that's sort of a liberating feeling. And as a young lawyer, to have this freedom to simply look at legal issues, starting off with a very open mind, and then come to your own conclusions and then have the opportunity to present your conclusions to others, including superiors, I think was a very beneficial aspect of my formative years as a lawyer.

Obviously, you get to positions where you have to simply think more as an advocate for a position because your client may have already done something, and after they've done something they say, "Well, can you help us out of this mess?" and you have to sort of deal with the facts as they are. But at the SEC, I felt that we were free to form our legal views and join them with legal policy, because the SEC obviously makes policy as well as carries out the law.

WT: So you then moved into private practice in 1981?

ER: Yes.

WT: What prompted you to move out at that time?

ER: Well, we had had our second child and we were running out of bedrooms, and so we had to get a bigger house, which meant I needed to make more money. (Laughter)

WT: It's a common story, actually, that.

ER: More seriously, I spent five years at the SEC and I thought that was about the right amount of time to spend. And fortunately, at the SEC, one of the commissioners was

Steve Friedman, who had come from Debevoise & Plimpton and was returning, and the general counsel, Ralph Ferrara, had left or was leaving to join Debevoise & Plimpton and open up its Washington, DC, office. I stayed on for a few months under Ed Greene. I was asked to interview at Debevoise & Plimpton because Steve Friedman knew me and Ralph Ferrara knew me, and lo and behold, I was given an offer. And I think when you get an offer from a firm like Debevoise & Plimpton, it becomes a very easy decision. What a wonderful opportunity, and I took it. This was in the fall of 1981.

WT: So you spent, then, sixteen years all at the same firm?

ER: Correct.

WT: Debevoise & Plimpton?

ER: Yes.

WT: So since we're, in this series of interviews, interested in investment management, and in particular your time at Fidelity, maybe we can just look to a few highlights of those years.

ER: I can conflate my time at Debevoise very succinctly.

WT: Oh, very good. Excellent.

ER: I was mostly a banking lawyer. I did a little bit of securities law. In fact, I did more than a little bit. I did some public offerings, I did some private placements. But what I did very, very little of was investment company work. I was a corporate lawyer and I was a securities lawyer. There was, within the corporate department of Debevoise, a team that did mutual fund work. I was not part of that team. I dabbled a little bit, but I was not part of that team. And so, long story short, when I came to Fidelity in the fall of 1997 as the general counsel of Fidelity Management and Research Company, the mutual fund arm of Fidelity, I was coming in as the chief mutual fund lawyer not having practiced as a mutual fund lawyer, which some lawyers within Fidelity's legal department, I think, knew.

WT: So how did you end up making that move over there, then? How did that come up?

ER: Well, I have to begin this and stress that I came in because Bob Pozen said that Fidelity should hire me. Bob had been the general counsel of the parent holding company of Fidelity, and had then moved on to become the head of the business part of Fidelity, the business unit that operated all the mutual funds.

WT: It may be helpful just to kind of go over the structure of the company. So you have the holding company, you have the business part with the fund. What was the name of that?

ER: So Fidelity is a privately held company, ownership of which is roughly evenly divided between the Johnson Family and then executives of Fidelity, both present and former.

And Fidelity's main business is the mutual fund business. However, Fidelity, the private holding company, has other businesses, and perhaps the most prominent aside from the mutual fund business itself is its brokerage business. It also has a real estate business. If you visit the Seaport District of Boston, you will see physical manifestations of its real estate business, in part the Fidelity Seaport Hotel and the World Trade Center. And it has various other businesses. It's in insurance and the like. So it has a vast array of financial and some non-financial businesses, some of which have started since I left, like it grows tomatoes in Maine, and if you buy Backyard Farms tomatoes you're doing business with Fidelity. If you took Boston Coach, a company that they started but sold a few years ago, you were doing business with Fidelity.

So you needed a general counsel that would sit at the very top, the pinnacle, and that was Bob. But he spent the preponderant amount of time on the mutual fund side. The general counsel of the mutual fund company within Fidelity had left, and that company is Fidelity Management and Research Company. So I was brought in as general counsel of Fidelity Management and Research Company. Bob had moved over to the business side to become the head of the business side of the mutual fund business. So, in effect, Bob sponsored me, which was a great sort of transitional form of protection. It's something like, give this guy a chance to learn about Fidelity and learn, really, about mutual fund regulation, and I learned a lot from Bob, but a lot from others as well.

WT: How long had you known him at that point?

ER: Bob and I went back to the General Counsel's Office. I worked directly under Bob. Bob promoted me to be assistant general counsel when he was deputy general counsel. We've been friends, I would say forever, but since 1978.

WT: So give me an overview, then, of your responsibilities within the Management and Research business.

ER: Yes. So, from a formal standpoint as general counsel, I had a group of lawyers who were responsible for every single aspect of providing legal services to the businesspeople in the mutual fund business of Fidelity. And Fidelity is a completely vertically-integrated mutual fund firm. That is to say, it does everything from soup to nuts, not only the asset management side of mutual fund work, but the distribution and marketing side, and all of the back office, all of the record keeping and all of the administrative work, all of the pricing of all of the securities that are held in all of the funds' portfolios. Everything that mutual funds need to do to be in business, everything that a mutual fund management firm needs to do to be in business, a lot of which gets outsourced to other firms in many other mutual fund complexes, is kept in-house at Fidelity.

So I had people in marketing and advertising and distribution, and people on the asset management side, and we also had lawyers that had to coordinate with lawyers who were sort of working with the brokerage side, because we had internal distribution of our funds. So there was that aspect of simply serving as the most senior lawyer, overseeing all of that work, being able to coordinate and give direction to those individuals. Deal with the businesspeople who are the counterparts within Fidelity, but also to then explain and listen to senior management, who would have definite views about directions they wanted the mutual fund business to go.

The second main category of work that I had was with regard to the independent directors, the boards of the Fidelity funds, and the Fidelity funds had a majority, I would say a supermajority, of independent directors. And the Fidelity funds' board consisted of very intelligent, very highly engaged individuals like Bob Gates, who, even as he was a fund director at Fidelity, he was a nominee to become secretary of defense. We were waiting for him to be confirmed before he came off the board of trustees in our funds.

So Fidelity had monthly meetings of their boards of trustees, and a lot of fund complexes might meet on a quarterly basis. We had monthly meetings. We had a month or two off in the summer. And so there was a constant cycle. As soon as you finished the work to assemble all of the material necessary for a particular board meeting, you then had to turn your attention to the next board meeting. And it was not simply an assembly line process producing memoranda and other documents to inform the directors, it was actually understanding what the challenges were for any given month to make sure that in between meetings, conversations were happening with the individual trustees, particularly the lead independent trustees, to give heads up on issues that were being thought of within Fidelity, trying to figure out how to coordinate with the trustees and how to position those issues that needed to be presented to and decided by the trustees. So that was an enormous undertaking.

When I was there, for most of my time we had a single set of individuals who served as trustees for all, each and every Fidelity fund. So you might have – and the numbers escape me – you might have like 300 or 350 or 400 funds. For each fund, you'd have the same set of individuals serving as trustees. In fact, I would get phone calls saying, "Eric, I just got a call from somebody at some newspaper asking me how many boards do I sit on at Fidelity. Can you give me the number?" And that number would change from month to month as we were introducing new funds or maybe merging funds.

But the difference between mutual funds and corporations, one difference is that these funds, yes, do have separate legal personalities, but they also are extensions of the adviser or they're the way the adviser provides services to its customers, and so there are common questions, common issues that cut across the funds. And the trustees themselves thought it's more efficient for a single set of individuals to sit astride of a variety of funds, because there are so many common issues of service and quality of service and operational issues that we can make informed decisions on if we can see the entire landscape.

At the very tail end of my career at Fidelity, the decision was reached by the trustees, maybe we should break ourselves up. Maybe we should have one set of individuals who will be trustees for the equity funds, another set of trustees would be responsible for the fixed income, the bond funds and the money market funds, and that's a split that I helped usher in in the final year when I was at Fidelity in 2007, 2008.

WT: So these individuals must have been pretty continuously occupied with their duties on the various funds. That's true of the independent directors as well as Fidelity's directors?

ER: Well, Fidelity's directors spent their time being senior management at Fidelity. So if you were Mr. Johnson or Abby Johnson or Jim Kirby and you spent your every breathing moment during the workday at Fidelity, you could show up at board meetings and you'd be very well prepared. Yes, you would have read the material, but it wouldn't have been very familiar to you. So it was an important aspect of their overall responsibilities, but it fit very naturally with their day-to-day work and responsibilities.

I should say, if we're still on this topic of what my responsibilities were, there's a third category. I mentioned just coordinating the legal work and dealing with businesspeople, number one. Number two, coordinating and working with the board of trustees. The third category was representing Fidelity to the outside world, especially to the SEC, but to other regulators and to the media, so that fell to me as well.

WT: And amid all these responsibilities, much of that must have been almost managerial skills as much as legal skills, which would partially explain why they wouldn't necessarily get a '40 Act lawyer for –

ER: Well, that's what Bob Pozen told me. He said, "You know, you'll learn the '40 Act." In fact, the way I decided that I would learn the '40 Act is I would force myself to teach it to others. So within a couple years, I started teaching mutual fund law in a course that I gave at Boston College Law School, and I taught there for ten years. I felt the best way to learn something is you force yourself to be in a position to teach it to others.

WT: Right. You've done some writing as well while you were in private practice?

ER: Yes.

WT: So that habit of digesting the law in that way must have been useful as well.

ER: Well, when I was at Debevoise, other people would say that I was a lawyer's lawyer, and I always took that as a very high compliment. I would get calls from a lot of lawyers within the firm, many of whom were deal lawyers. I'm probably engaging in some hyperbole, but deal lawyers sort of have this perverse pride in having business acumen, and their knowledge of substantive law in certain areas may not be as high as others, but that was okay with them. In fact, they just prided themselves on negotiation skills, drafting skills. And I would get calls from lots of lawyers, especially lots of lawyers in the New York office on a lot of questions under the securities laws and the banking laws. They're in deals and some questions have come up.

So it helped me become, I think, nimble about reading statutes, reading regulations. I was greatly aided by being at the SEC. I don't know how you can replace being inside an agency that has the job of drafting rules if you're trying to, as a private lawyer, advise clients, because I found when I was at Fidelity, lawyers who had not served in government look at a rule as if this must be gospel, or if there's any ambiguity, if the SEC says this is how we construe this rule or this statutory language, well, they must be right. They are the SEC. But having been there, I knew the self-doubt that existed within the four walls of the SEC on so many things. That self-doubt was kept quite confined within the four walls of the SEC, but when I left, I understood that they're like other lawyers. They look at ambiguous language and they have questions as well about how do we construe this language.

So it helped me when I went to Debevoise and then to Fidelity with that experience to know that if there's some language here, whether it's a statute or a rule, and there's some ambiguity or there's something that's uncertain here, well, I'm entitled to come to my own view. I don't have to abdicate my role as a lawyer to the agency, in this case the SEC, just because they're the SEC. They could be right, maybe they could be wrong. And so one thing I did when I was at Fidelity is when I went to an outside law firm on various questions of law that I felt it important to get an outside legal opinion on, if I get an opinion which cited a no-action letter, I would give it back and I would say, "No-action letters, as the SEC itself says, have no precedential value, they're not binding. It's only the staff that's speaking, it's not the agency. You have to cleanse this letter of any reference to a no-action letter. And if there's ambiguity on the face of a statute, you've got to tell me what your view of what the better interpretation of this statutory provision is without citing or relying on any SEC no-action letter. After you do that, if you want to say, 'By the way, the SEC staff in these no-action letters agrees,' well, that's okay, but I don't want you relying on SEC no-action letters."

And I found when I was at Fidelity that people were cowed by these informal pronouncements, whether they took the form of no-action letters or speeches, and that's not the way law is made. That was one of the things I tried to impress upon the lawyers when I was there.

WT: That's very interesting. So we'll be talking about some specific developments within the mutual fund world and its regulation, and so I'm curious just in a general sense how much of your attention would be occupied by strategic sorts of things and how much by some of the more day-to-day duties that you were describing a little bit ago?

ER: I would say that it was very lumpy, and it really would depend on whether the SEC was doing something that Fidelity thought was particularly important to its business or to the mutual fund business generally. When I first got to the SEC, we had Plain English Disclosure, we had the name test rule, things like that, and it's like, okay, let's do this. It wasn't a major thing that dominated my time or, frankly, the time of most lawyers. Then there came the market timing and the late trading episodes. I don't use the word "scandal." I'll leave it to others to use the word "scandal," because it's a value-laden label.

Fidelity actually was not itself involved in any of that, but we were swept up with the SEC's broad-brush approach to late trading and market timing questions. And so that was 2003, 2004, and then lasted for two or three years thereafter, and then we spent considerably more time on those matters as the SEC came out with its rule proposals, in particular the rule that would have taken fund board structure to a different place than what Congress thought it was doing when it enacted the Investment Company Act with the requirement of having a supermajority of independent directors and having an independent chairman of fund boards. That was something that caught Fidelity's attention.

WT: We'll definitely talk more about that. So, being Fidelity, it's one of the main players in the business. Ned Johnson, somebody like Jack Bogle is one of the unofficial spokespersons of the industry, so to speak. How conscious of that were you in your position? How much did that affect your job, the prominence of Fidelity within the industry?

ER: Very much. But, you know, when you're exposed to anything over time, you tend to just accept it as normal. I remember when I first went to Washington, DC, to go to Georgetown Law School and I looked up, there's the Capitol Building, there's the Washington Monument. I can't believe I'm looking at the Washington Monument and looking at the Capitol Building. They're magnificent. It wore off over time. I still think they're magnificent buildings, but you could be in your car and you're driving back and forth and you're changing the radio station.

WT: I know exactly what you mean, yes.

ER: So when I got to Fidelity, I go, “My God, there’s Ned Johnson. There’s Abby Johnson. Who’s that person there that looks like Andy Warhol? My God, that’s Peter Lynch.” So that certainly struck me when I got there, but after a few times, you accommodate yourself to those things. And yes, it’s Mr. Johnson, it’s Abby, and it’s Peter, and you’re relating to these people as people and you realize that there’s a certain surreal aspect to things that dissipates once you’re inside. So you can pick up a magazine and you can read about Peter Lynch or Mr. Johnson, and you can read with some amusement or bemusement about how anyone’s described, and you can compare it to what your own personal experience is. And typically, people sort of are down to earth, despite sometimes outsized reputations. They’re pretty much down to earth when you relate to them one on one, and that’s how things became fairly quickly after I got to Fidelity.

WT: Was there a sense that the decisions that you had to make, the decisions that Fidelity would make would be looked on with a particular scrutiny or that it would be particularly influential in the industry at large?

ER: Well, I should first say, what is the role of a lawyer inside Fidelity, how is a lawyer viewed. I would say, I came from Debevoise & Plimpton, and I don’t think I’ve ever been surrounded by as many smart people as I was when I was at Debevoise, until I got to Fidelity and I realized there are different ways of beings smart. And now I was surrounded by a lot of smart people that aren't lawyers. They're very smart, and it was one of the most refreshing and invigorating things about being at Fidelity. I got to just be around people who dealt with investing other people's money, and I could listen to them, especially at these board meetings, as they explained their investing approach and results to the trustees. And I'm learning stuff as if I'm in a classroom, and it was great. I didn't have to pay tuition or anything, and I actually was getting paid to be there. So that was the positive side.

Now lawyers, I would say, on the whole are not the most beloved category of individuals, and it's also true within Fidelity. I came to not only appreciate that, but to sort of welcome it. I had some standard responses, and I would give this to people up and down the echelon of senior management, including Mr. Johnson. My answer would be, on some questions of law, especially what the SEC was doing, "Look, my job is not to tell you what you want to hear. You can hire a lot of people to do that. My job is to tell you what I think you need to know." I was seen as a former SEC lawyer and a former Debevoise lawyer, and sometimes projected on me were what were perceived to be the shortcomings of the SEC, or the private bar.

And I said, "Look, I'm not at the SEC anymore, I'm not in private practice. I'm just here to tell you what my view of the legal questions are, and more importantly, perhaps, what the legal risks are," because on so many questions I had to say, "I cannot give you certainty." I would say people in investment management understand this, because they cannot act with certainty when they make investment decisions, so this resonated with them when I said, "I can't give you a legal answer that is absolutely certain, but what I can do is I can tell you the range of legal risk, and I could tell you questions that I think can be decided one way or the other as business decisions. But there are certain points at which I have to tell you it's now beyond a business decision, and as a lawyer I need to tell you no, you can't go that far, or you can't go in that direction, and that's my job. And if you don't like the answer, then I'm sorry, you'll have to hire somebody else, because I'm not here just to tell you what you want to hear."

WT: So there are a whole host of issues where you would try to see what they looked like on the inside of a major company, the first of which is that you arrived in 1997. The NSMIA legislation was in 1996, which swept away a lot of the complexity of state regulation and its influence in that world. And so I'm curious what that looked like, as to whether or not that was playing out still and what impact that had on the practices of the company.

ER: Yes. I think I got there by the time that most of that had been absorbed, and it obviously streamlined the process of getting our funds launched. That was the most important thing. Fidelity, as I say, was soup to nuts, and it pioneered the use of what we called project managers. These were very smart people who had very good college educations, sometimes graduate degrees as well, but on the whole, by and large, were not lawyers themselves. And this team of project managers, who varied from junior to senior, were responsible for drafting our prospectuses and our registration statements and other filings. For those people, it did make their lives a lot easier. I won't say simple, but less complicated, knowing that what they needed to focus on was the SEC and the SEC regime for drafting documents and getting funds approved for distribution.

WT: Were there existing funds that would revise their practices in some ways since they wouldn't have to abide by some particularly quirky piece of state legislation?

ER: Again, by the time I got to Fidelity, it pretty much had played itself out.

WT: Okay. So then there's also the Gramm-Leach-Bliley Act while you're there in '99, and of course, you had been a banking lawyer. I don't know if that's relevant to this particular point. And Fidelity had had some dealings in the banking industry already, is that correct, with trust funds?

ER: Well, it had a trust company and it continues to have a trust company.

WT: What were the impacts of that legislation, if any?

ER: Again, not so much. It didn't take deposits in its trust company, and it didn't have FDIC insurance. So that meant that – I mean, the key question is, are you a bank holding company, because once you're a bank holding company, which means you have a subsidiary, one or more subsidiaries that are banks, then you the parent and your non-bank subsidiaries now have to submit to oversight and regulation by the Fed. That never happened for Fidelity, and so it escaped all of the banking regulation that would apply to a bank holding company. So you take other asset management firms that had real banks, commercial banks within their holding company structure, and then they have to deal with the Fed and either state or OCC regulation. But Fidelity had never had to deal with any of that.

The other thing is that Fidelity's brokerage business was just that, it was brokerage, so it really never got into the underwriting or investment banking side. I think they did a little bit on the fixed income, the bond side, but not the equity side. So to cut to the bottom line here, Gramm-Leach-Bliley might have helped Fidelity's competitors by freeing them up to engage in all aspects of the financial industry, being on the buy side, being on the sell side, being asset managers, being commercial banks, being investment bankers. Fidelity wasn't in the commercial banking business and was not in the investment banking business. To the extent it was in the financial business, it was on the asset management side, and it did do insurance and it did do brokerage. And none of that really got that much changed because of Gramm-Leach-Bliley.

WT: How prominent were things like the use of investment in derivatives, things like funds of funds, international funds? These became bigger later on, but of course Fidelity would have had some involvement with them earlier on, and particularly the uncertain regulatory environment surrounding them.

ER: Right. So you said derivatives, you said international, I think.

WT: International, fund of funds.

ER: Fund of funds, okay. So let me take that maybe in reverse order. Fund of funds, yes, Fidelity did come up with various funds of funds and took advantage of some SEC rulemaking, which – and I guess we do go back to NSMIA, that made it easier for a fund management firm to come up with a fund of funds that consists entirely of its own funds. This lent itself in particular to target date funds, so Fidelity could say look, if you're an employee with a 401k plan account and you really don't feel that you're in a position to make your own asset allocation decisions, you tell us what your risk appetite is, from conservative to somewhat aggressive. And you tell us how old you are and when you plan to retire, we could put you into a target date fund and we can have this glide path that hopefully will take you, over the course of your career, to a landing spot where you will have accumulated savings for your retirement, because we will then take responsibility with a fund of fund structure to have a top fund that will allocate and reallocate your retirement assets among different underlying funds, including funds that primarily invest in stocks and other funds that primarily invest in bonds. And we'll worry about the proportionality of those allocations for you once you tell us what your risk appetite is and how many years out you have before your retirement. So yes, Fidelity did take and has taken major steps to offer fund of fund structures to investors, particularly in their retirement channel.

With regard to derivatives, Fidelity never thought that derivatives were something that ought to have any real place in the management of assets within its mutual funds. And why did they have that view? It's something like, well, Fidelity historically has been what's called a fundamental investment shop, and that is we are going to make decisions company by company, understanding how each company lives and breathes, how it makes its money. We're going to scrub their financial statements and we're going to form convictions about whether this company is on the right path, and we're going to reach decisions about whether we think the stock price is a fair price, whether it's undervalued or overvalued. Those are the kinds of fundamental investment decisions that we're going to make, and when we do make those decisions, we're going to either put money into the stock or sell the stock, or not buy it.

Derivatives really have nothing to do with that, right? What do you use derivatives for? Hedging your position would be one reason. What does that mean, to hedge your position? That is, gee, I'm not so sure. Maybe there's a downside here. Well, Fidelity's portfolio managers grew up in a culture that emphasized conviction. You really need to have conviction. When you buy a stock, and particularly when you overwrite the stock, you have to have conviction that this stock is going to perform well on an absolute basis and on a relative basis against its benchmark. If not, you have no business buying that stock. Don't buy the stock and then buy a put option, which is a derivative, to hedge your downside, because now you're showing lack of conviction. Better to diversify the portfolio, that's how you can deal with risk that your decision for any one stock might prove to be incorrect. So, if you have 112 stocks in your portfolio, if you're wrong about 1, hopefully you'll have three or four that will be right and you'll offset that one. So you don't need derivatives for that.

What's the other reason? Going back to my knowledge of CFTC regulation, if you use derivatives you're either hedging or you're speculating, and speculating is economic leverage. Forget that also, we don't want leverage in these portfolios, and if you feel strongly about a stock, don't start buying call options, just go out and buy more stock. And that was the approach, and remains the approach at Fidelity.

On international, Fidelity tries to offer, historically and to this day, mutual funds that meet any conceivable investment purpose of customers that they think is a good purpose to have. So, to have exposure to emerging markets, to have a European mid-cap stock fund, these are all good things, and so Fidelity historically said we'll do this if we feel we can bring something extra to the table, and that typically has meant we have to put boots on the ground. So if we're going to have a stock fund that's investing in Europe in mid-cap stocks, we need to have analysts in Europe that are dedicated to researching and developing their own investment thesis for mid-cap stocks in Europe. We're not going to just do it remotely from Boston or some other place here in the United States.

There are some funds that Fidelity refused to launch. So during the heyday of the dot-com hysteria, before the dot-com bubble burst, Fidelity saw a number of its competitors launching these dot-com funds and Fidelity said, no, this looks like a bubble and we don't want to go there, and we don't want our customers to go there, so we're going to not offer a dot-com fund, and it didn't do that.

WT: I was actually anticipating one of my questions, which is in this period, of course, when you arrived in ’97, that was ramping up. Clearly, there’s a business aspect of it wherein you have a lot of people who are simply investing in a rising stock market, some coming in when it’s very high indeed, and to a certain extent that’s just the business side of it. But from a legal standpoint, were there concerns about, even if you’re on good legal standing, about what sort of an environment the bursting of a bubble would create?

ER: Well, as I say, the funds that Fidelity was managing and it was offering were not chasing that bubble. That’s not to say that some funds that had 150 stocks in them might not have had some dot-com stocks in them. When the bubble burst – I don’t have the record before me, but I’m pretty confident in saying the whole market came down because the dot-com companies, because of their market capitalization, counted for a certain part of the S&P 500. That was going to have a negative impact on the S&P 500 average as a whole.

But Fidelity tried to educate its investors. I remember Fidelity went out with an advertising campaign, and it was the one time that they used Peter Lynch personally, and he was in a television ad campaign after the dot-com bubble, I think. I could be mistaken, but I think it was in the immediate aftermath, explaining to investors how to take an approach, which would be diversification with a view to the long term, not trying to time the market. If you turn over your portfolio too frequently or if you trade in and out of mutual funds, you could miss those days when the market actually goes up. There are some very fascinating statistics or data that show there are just a handful of days over years, and if you're not in the market on those particular days and if you take your money and put it on the sidelines and you miss those particular days when the market takes a significant step upward, then your total return over a span of years could be appreciably lower.

So one lesson that not only Fidelity, but other asset managers have tried to convey is, be there for the long term, and you have to ride the ups and the downs. Don't worry so much about what the market is doing on any particular day or week or month, just as you don't worry about the value of your house. If you're planning to live in your house for twenty years, just live in it. When it comes time to sell your house, you could take a look at that point.

WT: So you mentioned earlier that things like the Plain English requirements that the SEC came up with didn't occupy a major portion of your time. I'm just wondering what the implementation of these things looks like within the fund industry. Was it, indeed, fairly straightforward? Was there a lot of interpretation to be done as to exactly how that would work?

ER: Again, I think Plain English is one of those things that rolls off the tongue pretty easily. Not so easy to implement when you have to live within a statute and rules that have draconian liabilities for material misstatements. So I'm not advocating, but I would simply make the observation if you really wanted plain English, you'd have to do something about liabilities. And as long as you're telling people, gee, we would really prefer you to use Anglo-Saxon words rather than words that are derived from Latin, even though the words derived from Latin might have more precision, you're not going to get that far if you have private litigants who are going to, in the benefit of hindsight, look back at what's happened to their portfolios, and then if their portfolios have gone down in value, tried to find imperfections in your disclosure.

I'd also say that what's sauce for the goose is sauce for the gander. If Plain English is all that it's cracked up to be, you'd expect that it would have manifested itself more conspicuously in the SEC's own releases and publications over time. It's difficult to conjure up many other examples of writings that fall short of Plain English than SEC releases.

WT: So one of the standard lines about initiatives such as Plain English and Disclosure Simplification, both before and after, is that it tends to work pretty well at first and then things get added on to the disclosure as there are new liability questions that come up, as the products themselves change. Was that something that you could see on the ground in the aftermath of that, moving into the 2000s, is those sorts of things creeping back in for those reasons?

ER: Well, I mean, pick up a prospectus or pick up a registration statement. I think anybody reading this would say, first and foremost, this is an insurance policy, where it's written to provide insurance for the issuer. When it comes to risks and liabilities or potential risks, a lot of the risks that are in these prospectuses are things that are clearly outside the fund itself, or this is a list of the bad things that could happen. I haven't looked lately, but I would imagine Brexit would be prominent among the risks, perhaps, that would be associated with funds, not only international funds, but domestic funds as well. Any investment management firm here in the United States has no better idea of what the vote's going to be on Brexit than anyone else, I don't think.

In any event, knowledge of this is not something that is particularly more open or accessible to those that are in the investment management industry than anyone else that takes an interest in the pros and cons of Brexit. But yet, when you look at these risks of investing, it's something like, this has nothing to do, or very little to do with, the fund itself and the things that the investment management firm itself has peculiar knowledge about. But yet, if you have the liability exposure because, well, you didn't mention the risk of Brexit, people are going to put in disclosure. And so you can pick up prospectuses and go through it and say, "Yes, I know all this. Because I read the *Wall Street Journal*, I know about these things. Why should I have to turn to a prospectus to learn this?"

So I think a great deal could be accomplished by simply taking the approach, if you can find out about things through the general media by picking up a *Wall Street Journal*, we don't have to force fund management firms to put those kinds of things into their prospectuses. That could go a long way toward making prospectuses and registration statements more readable.

WT: Later on, the notion developed of making a lot of disclosure information available via the Internet, was that something that was there was interest at in Fidelity early on, in that 1990s, 2000 period when that was still coming in?

ER: Well, I think we still have a long way to go, but as long as people are given the right to get paper, they will get paper, because they won't agree to waive their right to get paper. When you say, "Would you like stuff sent to you electronically?" they might think, yes, but I can get that electronically anyway. All I have to do is go on my account on your website, find my account, and anything that's sent to me by paper I can get electronically, as well. So what you're really asking me is, do you want something both electronically and paper, or do you want something only electronically. And most people will say, "Eh, I'll take the paper, too." I have to confess, I like the paper myself, as well as electronic.

Then there are these curlicues within the federal law, and so I may be a little lagging here in the state of the federal law, but when I was at the SEC, the Right to Financial Privacy had some very cumbersome preconditions that you needed to satisfy before you could dispense with sending somebody a paper document. Chief among these was you needed affirmative consent, and negative consent; for instance we're going to stop sending you the paper unless you tell us you want it. That would not suffice. You needed to get affirmative consent from somebody. So that particular precondition has meant that the industry still pushes out tons of paper every year, and you'd have to go to a system of negative consent before you could deal with that.

WT: Keeping on the theme of digital technology, Fidelity created an all-electronic communications network in the late nineties, I believe. Could you tell me about that development and your experience with it?

ER: Gee, I'm not even sure what you're referring to.

WT: Well, I think it was one of the things you highlighted that you had quite a bit –

ER: Electronic communications network?

WT: Yes, I think so. I think that was fairly early on in the development of ECNs.

ER: Oh, I see, an ECN. Yes, Fidelity from time to time, and currently they're doing this, have tried to get the buy side to act together to see if they could bypass the sell side, the brokers. When you have, let's just say Vanguard on one side, T. Rowe Price on the other, one's looking to buy, one's looking to sell Apple, could we find a way somehow that we could cut out the middleman, whether it's Goldman Sachs or Morgan Stanley? We could just find a way to trade with each other and we could not have to bear the cost, which takes various forms, of having to pay a Goldman or a Morgan Stanley. Theoretically this has appeal, but in practice it's proven to be a very stubborn problem to overcome, and that is to find a way to get the buy side collectively to see that it's in its interest to do something like this.

Among other things, any one buy side firm sees itself as in competition with every other buy side firm, so T. Rowe Price sees itself in competition with Vanguard and vice versa. So even though it might benefit one or the other, maybe it's unfair to give particular names here, but more generally, it's thought of, what is my comparative advantage? Not only is it better for me, but I want to get an advantage here that's greater than the outcome that one of my competitors might accomplish. If it's kind of just even, maybe I don't help myself so much. And I think that's the attitude that's been taken. Are we going to get to the Reg NMS now?

WT: Yes, I thought that thematically, the issues were kind of linked, how you execute an order and exactly what constitutes a fast execution.

ER: So anyway, I want to try to restrain myself. We had for decades, for a century, this domination of the New York Stock Exchange of our equity markets, and you had to go through a monopolist, which was the specialist. Now, the specialist firm could vary from stock to stock, but whatever the stock was you had to deal with one specialist that had a monopoly in the trading of that stock. That specialist could decide over and above everyone else when it was going to raise the price or lower the price of any stock, and when it was going to step in and have the highest bid or the lowest offer. It always had the last look at any trade. And any trade that was going to go through, it could leapfrog and put itself first by just coming up with a slightly better bid or offer. Very frustrating for everyone else, including large mutual fund management firms.

And sort of like water seeking its own level, the more convoluted the regulatory structure is, the more convoluted the ways that the water circumnavigates around those obstructions to find ways to allow market forces to work, ways that market forces wouldn't work if you didn't have all of that complicated legal and regulatory obstruction. So when the monopoly of the New York Stock Exchange began to erode, not because of high-minded policy at the SEC or anywhere else, as in many other areas, technology was simply superseding. And it became evident that with advances in technology, you didn't need a physical floor to trade securities. In fact, it was antiquated to contemplate that you'd have human beings on the floor shouting or raising their fingers to indicate whether they were buying and selling at any particular price.

So, the handwriting was on the wall in the first part of the 21st century that floor trading was going to go the way of the horse and buggy. Then the question became, well, what kind of electronic markets are we going to have? And Fidelity had this quaint notion that, why don't we just let competition prevail and let every investor decide for itself – because I'm speaking of large firms now – what is in the best interest of the accounts or the funds that the management firm is responsible for. And Fidelity had the view that the best execution was a little complicated. If you had a crystal ball and you could foresee the future and could foresee where prices were going to be in the future, especially the immediate future, five minutes from now, maybe you'd have one set of answers. But if you didn't have a crystal ball, and nobody did, you really didn't know where prices were going to be five minutes from now.

That might mean that if you have a large block of stock to trade, and say the price is, for 100 shares, 100 shares are trading at $20 a share, for 100 shares, and if you were trying to buy half a million shares, and if the word got out that Fidelity is trying to buy half a million shares when 100 shares just traded at 20, gee, you might have to pay more than $20 a share if you're trying to buy a half a million, if word gets out. So it's obvious to everyone, we need to try to keep a lid on this and try to get this half-million share block bought without moving the market more than we need to. In fact, we want to minimize the upward pressure on the price of the stock that would come from our very own half-million share purchase.

How do we do that? Maybe if we could find somebody on the other side, maybe a Goldman Sachs or Morgan Stanley, who'd sell us half a million shares, maybe we'd be willing to pay $20.50 per share. We don't have a crystal ball, maybe we'd be paying a little bit more than if we didn't do that, but maybe if we just, on our own, went into the market and just started buying up shares at 10,000-share or 20,000-share blocks, maybe the market would sniff this out, and pretty soon they'd figure out Fidelity or some large buyer was in there for a big order, and maybe the average price that we'd have to pay would be now instead of $20.50, maybe it would be $23 a share.

And so, now, we said to ourselves, the best execution is not necessarily primarily what is the relationship of the price you're going to pay to the price of the last trade in which the stock was sold, especially if it was 100 shares, but how can you get an average price for a large block of stock – because that's the only way that Fidelity trades, in large blocks of stock – what's the best way to do that? Sometimes doing it really quickly would be the best way. What's the best way to do something really quickly? Well, maybe doing it with one trade at half a million shares, or maybe doing it in five trades at 100,000 shares. And maybe you're willing to pay a little bit more than what you'd be paying if you'd be buying 100 shares.

And that was our view, that was Fidelity's view, that best execution could not be limited to best price if your view of best price is based on hindsight, like after trading has occurred and then you could look back and see what price was paid and then also have the benefit of hindsight to see what trades occurred at 100 shares per trade in later trades. But it also includes how quickly can you get it done, with how much certainty can you get it done, with how much anonymity can you get it done, with how much liquidity some counterparty might be able to provide to you. And our view was, you can hold us to a duty of best execution, but please understand that best execution can't be judged in hindsight based on one factor, which is what price did you pay compared to the price that the stock was trading just before you started buying or selling. And that was the view that we made to the SEC, and wasn't quite the approach the SEC took.

WT: So with Reg NMS, then, did that really have a major impact on the way things had to occur?

ER: Well, now we're getting into actually the current day, and having been away from Fidelity since '08, I'm speaking now with a somewhat dated view. I think the view was, when Reg NMS was adopted, and that was, this is pretty superficial, and why is that? Because what Reg NMS said and continues to say is that this best price applies only to what's called the top of the book. So for the sake of explanation I will engage in a little hyperbole, but the principle is accurate. Let's say that for a stock that's been trading around $20 a share, let's say that on the New York Stock Exchange you have one bid for $19.99, and then you have another bid for $18. Now, the $19.99 per share bid is only for 100 shares. Then the next-best bid goes all the way down to $18, and instead of 100 shares, now that bid is for a million shares.

Now, if you're selling shares, you're obligated under Reg NMS, whatever market qualifies as a "fast market," you have to satisfy, across all the markets, the national best bid and best offer. So if you're selling, maybe the best bid is $19.99, but that's only for 100 shares. So what you have to do is you have to take that bid out. You have to say, "Okay, here's 100 shares. Go away." Now I'm free to figure out if I'm selling a million shares, what am I going to do with the rest of the 999,900 shares that I want to sell. Now, under Reg NMS, you're free to go anywhere at any price. You might say, "Well, what? What do you mean?" What if NASDAQ has a bid at $19.50, and that's the next best bid underneath the $19.99. Don't you have to satisfy the $19.50 bid at NASDAQ before you sell to anyone else? The answer is no, you don't, under Reg NMS. All you have to do is satisfy the national best bid and best offer. You can tell NASDAQ, "Sorry, your bid of $19.50 is not the best bid. I don't have to honor it. I only have to honor the national best bid, and if I'm trying to sell a million shares, I can find any buyer anywhere to buy the rest of my block of stock. If it's Goldman Sachs or it's Morgan Stanley and they're bidding $19.40 per share, but they'll buy a million, or I should say 999,900 shares and take everything off my hands, I could sell all of it to them and none of it to you."

So Reg NMS at Fidelity had this superficial quality to it. It's something like, look at national best bids and offers. They're at 100 shares, best bid and best offer. What has that got to do with managing a mutual fund complex? It's completely surreal. We don't deal in 100 shares. And that's where the SEC declared victory. I'll leave it to others to explain. What I would say is this – well, a neutral word, I guess, is convoluted – market structure we now have where you have all sorts of games being played with people flashing these prices and then cancelling these flashes of prices to kind of smoke out who else is out there. I'm no expert. Doesn't seem to me to be the optimal way to have a market, and I think if Fidelity's position had prevailed, maybe we would have a less convoluted market today.

WT: That's very interesting. I'd like to move now into that period with the late trading and market timing events. The first thing that I think I want to try and get into is what the view is of the pressures, particularly in that post-2000 post-dot-com era, that led other companies into that problem, and what is it that kept Fidelity out of it?

ER: I would preface this by saying that wherever you go, you'll find that most people are trying to do the right thing. And I'd have to say that, having been at the SEC, having been in private practice, having been at Fidelity, now that I'm in academia, most people try to do the right thing. But you have some people that try to cut corners. You have other people, actually, who think that they can get up to the line without crossing it, and they think they're doing the right thing, but maybe they're getting a little too close, and then in hindsight you see that they have actually stepped over the line.

So it's the way I look at late trading and market timing, and I really would draw a sharp distinction between the two, as, to its credit, the SEC did. Late trading means that you violated the law. You're supposed to do forward pricing for mutual funds so that when any mutual fund investor puts a buy or sell order in, that investor has to wait to see the price at which that order gets carried out, because it has to be based upon some future valuation of the fund's portfolio. And if you're able to do a trade based upon some prior valuation of the fund's portfolio, that's late trading and that's a violation. Everybody knows that. And anyone that permitted somebody to send in an order after four o'clock in the afternoon and get a trade based upon the four o'clock NAV, that's late trading, that's black and white, that's a violation, and nobody deserves any sympathy at all who allowed that to occur.

Market timing is more complicated, because if you were to restate market timing in a positive way, you'd say it is simply the carrying out of the investment maxim that you should buy low and sell high. You buy when you think the price is low and you sell when you think the price is high, and people do that every day with stocks. And people have done it with mutual funds, and they do do it with mutual funds. Time to get out. Right now, maybe people are deciding, gee, maybe I should get out of funds that are weighted toward companies that might be adversely impacted by a decision by the UK to exit the European Union.

So what's wrong with any investor saying, "I want to get out quickly. Oh, by the way, I just got in yesterday." So what's wrong with that? The problem is, with mutual funds, that the costs are mutualized, and that is every time an investor gets in to a fund and gets out of a fund, there are transaction costs, processing costs associated with that. And in particular, when you have somebody redeeming out of a fund, well, if the fund doesn't have cash on hand to pay the redemption, now the fund has to liquidate some of its portfolio, sell some of its holdings, pay brokers to carry that out and incur other transaction expenses. What does that do? Well, it imposes a cost that is mutualized, and it's spread out across all those who are remaining in the fund.

Well, that's going to be true of anybody that redeems. Somebody that's held for ten years and redeems is imposing a cost in the fund. Why should we care so much about somebody that redeems not after ten years but after two days? Well, it's because the person is a repeat redeemer, is you're in and out, in and out, and in and out, so you're imposing disproportionate amounts of expenses on the fund. Well, what's wrong with that? Well, number one, it's not nice. Show me where in the statute you're supposed to do things that are not nice. I can't point anywhere to any provision in law or rule that says, "Don't do things that are not nice when you're trading in and out of a fund."

So what's the legal problem? The legal problem really is not the investor who's doing the market timing, it's the fund. Does a fund have an obligation to prevent investors from doing things that are not nice? No. But a fund does have an obligation to be accurate in what it puts into its prospectus. So if it puts into its prospectus that it's going to take steps to prevent investors in the fund from doing things that are not nice, or more precisely, to try to retard or dampen the market timing of investors, then it has to adhere to what it says it's going to try to do. So if it strikes deals explicitly with, say, hedge funds, and to tell certain hedge funds it's okay for you to market-time, especially if you want to give us some other clump of money that we can then separately manage and earn a separate fee off of, we're happy to have you market-time, or we'll at least look the other way. Now you're acting in a way that's contradictory to your disclosure, and that's the violation, is a disclosure violation.

So the SEC's response, as you may know, was not to prohibit market timing, not to prohibit funds from allowing market timings, but telling funds you decide whether you're going to tolerate market timing or not. If you decide you're not going to tolerate market timing now, you've got to put into your prospectus according to our prescriptions, what particular things you're going to do to prevent market timing, and then we'll hold you accountable to that. If you say, "Well, we're not going to actually police market timing, so beware if you're putting your money into our fund or some particular fund here. We're telling you you're swimming over your head. Just be aware of that. We're not trying to police market timing," you're actually okay under the SEC's market timing disclosure rule.

So back to Fidelity. Before the market timing, late trading abuses occurred, Fidelity thought, I think like most large firms and most small firms thought, this is not healthy for the majority of investors in the fund. We'll try to prevent this from happening. Was this purely altruistic? I'd have to say only partly altruistic, because also it's partly with a view toward we want the best investment returns because, guess what? If our investors can get better investment returns that were down is not only to their benefit, but to our benefit, we'll attract more assets into the fund. So in this respect, we have an alignment of interests with our investors.

So we had, actually, people at Fidelity who had the responsibility of looking out to see is there any kind of activity that's happening that looks like market timing, and then if there was, to take actions to kick that investor out. It was pretty much as simple as that. I think the record shows that one or two of the hedge funds that had struck deals with other fund firms had come to Fidelity, and we told them to go away.

WT: Could you give me a brief guided tour of what compliance looked like at the time at Fidelity, and then how did that change, if at all, following the SEC Chief Compliance Officer Rule?

ER: Okay. Fidelity invested quite a bit in internal compliance, and a couple of things in Fidelity that may not be true of other fund firms. A decision was made, or was simply there, that we're not going to have the compliance function inside the legal department.

And why is that? Because a lot of other companies, both within the investment management industry and elsewhere, put their compliance function inside their legal department. Fidelity thought, we want our lawyers to deal with legal advice to us and handle legal questions. Compliance is more, really, the responsibility of the business people. Now, they can hire people that are trained as lawyers, but we want them embedded in the business units.

And to the extent that these compliance people, many of whom, maybe most of whom, are, themselves, lawyers need legal advice over and above what they themselves know, they can seek legal advice from the legal department, and in fact they did. But we want the compliance people to be part of the business unit, because we think that that heightens accountability. If something goes wrong, now we can hold the business unit leader responsible. They can't point fingers outside their business unit. And it also helped to preserve other things, like attorney-client privilege, because you have a lot of conversations that go on that aren't strictly speaking in the compliance area about the provision of legal advice.

And there was geographic questions, too. Fidelity was spread out in different locations, and because you wanted people that really understood the business operations of the different units, you wanted those people there geographically, whereas you wanted your legal department, lawyers, together in Boston. So there was a considerable investment in compliance resources, both human resources and otherwise. When I got to Fidelity, they were well in place. It was a little foreign to me when I got there. I didn't know who was what, and I learned it over time.

WT: Other means, you mean like automated computer analysis?

ER: Yes. Well, for example, on the mutual fund side, there are rules that govern, for any one fund, what you can do in terms of investing in a given security, how much of the funds. Assets can go into the stock of any one issuer. There's certain issuers and certain securities that you can't buy because they are outside the investment mandate of that particular fund. There are poison pill limits, there are regulatory limits if it's an airline or some other regulated industry. And Fidelity had systems that were filters between the fund manager and the trading desk so that before an order actually got traded by the trading desk or placed by the trading desk with an outside broker like Morgan Stanley, it would go through these computers acting as filters, and their systems were programmed to catch, for any one fund, no, you can't go there. This is a stock you can't buy, or you're at the limit because of the poison pill or because of some regulatory limit.

So the compliance people obviously had a role in designing those systems and overseeing the efficacy of those systems, but also, there's a lot of upstream reporting that went through the system too and then got disseminated out to senior management. And compliance issues were brought to the board of trustees for resolution when there were problems that created questions about whether the funds had been injured and whether

Fidelity's proposed resolution was fair to the fund and its investors. That was all in place before the Chief Compliance Officer Rule.

So I think the impact of the rule differed from management firm to management firm. In my view it's, during the time that I was at Fidelity, the best rule the SEC adopted for the investment management industry, because what it did was to elevate the status, not only the compliance function within the investment management firm, but it elevated the status of the individual who carried out the function as the most senior compliance officer, because the rule said that that compliance officer must have direct access to the independent directors of the funds and that the hiring, the firing, and the salary of that most senior compliance officer was a matter ultimately to be decided upon by the fund directors. And because independent directors dominate in number and proportionality, the fund board decided by the independent directors.

And so I thought it was a very therapeutic rule, and it had the virtue of sort of removing the SEC from the process. Once it adopted the rule, it was, okay, now you have this direct relationship of a chief compliance officer and the independent directors of a fund. The SEC stumbled out of the gate. There were speeches given by some people at the SEC where they essentially described this chief compliance officer as their surrogate or as their agent within the fund management firm, and that sent shivers up and down fund management firms. The SEC realized that it was probably not the best way to describe these people. They really were inside the fund management firm, and they were answerable ultimately to the independent trustees, and let's leave it at that.

WT: It's an interesting point, because I've spoken to some other people who are in the SEC, and there was an interest, I think beginning with Chairman Levitt, in using professionals as –

ER: Gatekeepers?

WT: – gatekeepers, or they would even use the term "surrogate," so that must have been part of their thinking, along those lines.

ER: Yes. Every institution has its own personality, so I can't extrapolate beyond Fidelity, but I have talked with my peers in other firms. Once you're seen as an outsider, your access to information goes down. And better that you be viewed as inside the tent so that you get access to the information that is necessary for you to do your job. Is it a perfect system? Nothing's perfect, but I think it's the better system than having agents of the government put inside a fund management firm.

WT: So were there guidelines or policies within the company as to what to do in particular cases? I know the one that made the press was a couple years after the scandal cases, there was a gift-giving case within Fidelity, and I think the individuals involved were fired. I mean, is that something that's at the discretion of the boards completely, or would that result have been mandated in that particular case as a sort of no tolerance thing?

ER: Well, we don't have enough time for us to go into any detail there. There were some bad lapses of judgment. There is a line between accepting an innocuous gift like a hamburger lunch and getting a courtside seat to an NBA playoff game. And so some of the individuals that were on the equity trading desk at Fidelity accepted some rather generous gifts in the forms of tickets to high-priced events. The question became, gee, did this actually harm the funds. Did they start preferring those brokers who were lavishing them with these high-priced tickets or other things of value or not. We had a very strong view that it actually didn't affect the quality of the execution. The best firms were getting the order flow anyway, and it really wasn't influenced by whether a particular firm gave tickets or not.

However, it was a matter that was open to debate, and so Fidelity had to settle, or did settle. Never went to court, so we don't know what a court would have decided. And it paid a significant amount of money into the funds based on some rather involved calculation of theoretically what would have been, what could have been a better result. And if theoretically that better result was greater than what the funds actually accomplished in their trading, let's make up the difference. And Fidelity paid a fine to the SEC. So it was an unfortunate episode. It was quite separate from the late trading and market timing things, but it was something that was regrettable.

WT: One thing that I want to be sure and talk about, obviously the governance issues, but I also wanted to ask quickly about the proxy rule. Now, of course, Fidelity, by virtue of being a humungous organization, is a major proxy player, and so I'm curious about what the view within the company was. I know that they opposed the proxy rule on the basis that it was burdensome.

ER: Well, I think that there was a lot of startup cost. I think at this point – again, I've been away for years – but they'd say, "Yes, that's the cost of doing business." One could ask if investors place that much weight when they choose among different funds how any one fund is voting the proxies for the companies in which the funding is investing? I would say, we're talking about retail investors, go ask retail investors how often they vote proxies that they hold directly and stocks that they own directly, and that might suggest an answer to you. It's really not what investors place much weight on. Quite frankly, what investors place almost the entirety of their weight upon is what you would naturally assume to be the case, and that is how profitable is the fund that I'm investing in? How big are my investment returns?

Nonetheless, you do have a vote as a fund, and sometimes you may own upwards of 3 or 4 percent. It's really unusual to get over 5 percent, for various regulatory reasons, the shares in a fund. And of course, a lot of funds might collectively own shares that might take you over 5 percent. Sometimes over 10 percent. So you certainly can have an impact on the outcome of any particular vote.

WT: In the same period, Fidelity was becoming a bit more activist in terms of overseeing corporate governance, is that correct?

ER: Well, I would say that for any fund firm, I would encourage people, when they use the word activist, and I'm referring mostly to journalists, don't take the word of anyone. Look at actions. And I think there's more rhetoric here for diversified investment management firms than there is real action. And when you think of activism that means you're going to bring a proxy contest and you're going to try to replace the board. And it doesn't really make much sense at all if you're a diversified firm, you hold 100 or 150 or 250 stocks. And when you look at the fund holdings of any of these funds at Fidelity and other large firms, there might be a very few firms that the fund holds even 1 percent of. Then you're getting down to .8 percent, .6 percent, .03 percent of the fund's asset.

So how important is it, bearing in mind that there's a multi-step process of causality you have to go through to actually effect a change at a company. You want to replace the board, so you invest a lot of time and effort and expense to, what, elect one director or two directors? Maybe it's a staggered board, is going to take two or three years to actually change the composition of the board. And if a fund manager is holding 150 or 200 company stocks in his or her portfolio and that fund manager has some misgivings about a particular company, is the fund manager really interested in being activist in replacing one or two or even a majority of the directors on the hope that he or she will be successful, and on the hope that those individual directors will actually effect a turnaround of the company and that that turnaround will, in fact, lead to greater profitability for the company? No. What that fund manager will do is, well, I'm going to sell that stock and buy stock of a company that I think is better managed.

So that's the explanation from my standpoint. I teach corporate governance as one of my courses here, but also I've learned this on the ground at Fidelity. That's the view, and I think it's the right view. It's, we're not here to fix companies, we're here to pick the companies that are the best managed. And if we think they're not being well managed, we're not going to stick around for a year or two or three. We don't care if you give us proxy access or not, we're getting out. We'll take our money, hopefully at a profit, but if we have to at a loss, and then find a company that's better managed, that has better prospects for future earnings, and put our money there on behalf of the fund's investors.

So I would say that any firm that professes to be activist, that's a diversified investment firm, including firms that have most of their funds in stock index funds, I would say look to see really what they're doing. Are they bringing a lot of proxy contests to take over boards? Well, okay. Then they're activist. If they're not doing that, I think they are engaged more in rhetoric than in action.

Having said that, we took the process seriously. There are certain issues that cut across any one company, so staggered boards. Fidelity, as most asset management firms, look dimly on staggered boards. When it comes to equity compensation plans, we had our parameters about how much dilution we thought would be acceptable for any given stock option plan, and we applied those across the board. But always open to listening to any one company to say, well, we're a little bit different, we're more dependent on human capital than other companies and other industries, so we need to use stock options a bit more, so we try to be a little bit flexible there.

WT: Okay, let's be sure and discuss the SEC's rules on fund governance and the proportion of independent directors, and of course the independent chair issue, which Ned Johnson had definite views on.

ER: Well, maybe we can come back for another two-hour taping, but I think the SEC will come back to this at some point. I think that, as I've written recently, whatever one decides is a good thing to do with regard to mutual fund governance, base it on the unique aspects of mutual funds and don't simply piggyback on what one sees as the right approach for ordinary corporations, because mutual funds are different. They're products as well as legal entities, and fund investors are not just investors or shareholders in the fund, they're also customers of the management firm. So there is this direct relationship between fund shareholders and advisers. And fund shareholders hire and fire their management advisers, because they do that by buying and then redeeming into or from a fund. So these are important distinctions between mutual funds and ordinary corporations.

And at Fidelity, it's based upon the old tradition of the Boston trustee, where you did have a direct relationship, because most Boston trustees happened to be lawyers, and Ned Johnson's father was a lawyer at Ropes & Gray. This is where the investment management started, and then it obviously carried over to Fidelity. And Fidelity has always thought we are the direct fiduciary for our customers. And what we do is we provide our fiduciary services to our customers through the vehicle of our mutual funds. Hold us responsible.

Then this notion came about that maybe we're not the best fiduciary, because maybe there are conflicts of interest of the adviser, because the bigger the fund, the higher the fund management fees in dollars. And maybe the better fiduciaries are those who are independent directors. So think about that for a minute. So Mr. Johnson goes to work seven days a week for fifty years at Fidelity, and others devote their entire professional lives trying to figure out how to deliver the best investment results for individuals and firms that they see as the customers of Fidelity. And now they're hearing that maybe you don't have the best interest of customers at heart. Not only that, but maybe there were others who are pure and that have higher virtue than you, because they're independent directors.

Well, that struck a very odd chord with people at Fidelity, including those at the very top.

WT: Prior to that, had there been a Fidelity position with the original majority independent rule in the nineties, or in 2000?

ER: Fidelity had long had the structure of having not just a majority but a supermajority of independent trustees. And the philosophy was, we're in this together. We view the independent trustees as a valuable part of the process, because we need to be able to demonstrate to the independent trustees that what we're doing is the right thing. And it's a very efficient way for us to test our own thinking about what is the best thing for our investors. In a way, it's as though we have this built in focus group, in a way. It's a focus group that has a vote. It's, okay, these are people that are going to come to Fidelity one and a half days per month. True, it's not the same thing as six days out of each week, but it's something, and we'll give them materials, and then it's up to us to show them that what we're doing and whatever aspect of the mutual fund business we're talking about is the right thing.

And so it seemed to be a highly efficient way to deal with what otherwise would be a problem of collective action. Otherwise, you'd have to try to demonstrate to all of your tens of thousands of shareholders you were doing the right thing. So that worked very efficiently. But when you say, but wait a minute, we don't think you're as good a fiduciary because your fiduciary loyalties are torn, now, that was an ideological position that Fidelity took strong exception to. So this is really, you could say rightly or wrongly, but Fidelity really looked at this and Mr. Johnson personally, as a question of principle. Do we think we're as loyal a fiduciary to our customers as our independent trustees, and the answer was, hell yes, and we are not inferior as fiduciaries to our independent trustees, and that was really the basis for opposing the independent chairman role.

Seventy-five percent supermajority, we're at something like 73.2 percent. You need another independent trustee, we can add another independent trustee. That was not the point. And actually, the Fidelity board of trustees was organized along different functions. So we had a committee that oversaw marketing distribution, we had various committees that looked at investment performance, we had a committee of the board that looked at fixed income funds, another committee that looked at the equity funds, and whatever proposal Fidelity was making would first go to a committee. Each committee consisted of a supermajority of independent trustees and was chaired by an independent trustee.

I, in fact, went to the SEC and I met with people down there, including Harvey Goldschmid. I said, "Look, could you carve out an exception to this independent chairman rule so that if a fund management firm like Fidelity has every decision presented first to a committee, chaired by an independent director or independent trustee, and only if it gains approval at that level does it go then to a board, which may or may not be chaired by a management trustee, wouldn't that be enough?" I had nice meetings, but I wasn't able to persuade anybody that that should be an exception. So that's basically how we looked at it.

WT: Not necessarily asking for a Fidelity position, but maybe as somebody who's a professor of law lawyer, the Chamber of Commerce challenge, particularly in the cost benefit basis, what are your views on that as a way of challenging that role and its ultimate success?

ER: Well, yes, this is another two-hour conversation. The SEC, how should I say this, has lost the trust of the judges on the DC Circuit. Now, maybe that's changed because now you have some new judges because they've expanded the number of judges on the DC

Circuit. But I think the SEC has been a little creative in how it's presented its arguments and its facts to the DC Circuit, and the DC Circuit has come to not have 100 percent confidence in what the SEC tells it in its briefs and its oral arguments, and you can see this in the decisions that the DC Circuit has rendered.

I think the DC Circuit, or various judges, have seen the SEC as somewhat disingenuous in how it goes about its rulemaking and its argumentation. And so I think the DC Circuit has actually been probably harsh on the SEC in terms of the standards that it's holding the agency to with regard to cost benefit analysis. I actually think probably that the DC Circuit has exacted from the SEC a standard of cost benefit analysis that probably is difficult to reconcile to the Administrative Procedure Act and to the securities laws. But I think the SEC has invited that by the way it's dealt with the DC Circuit. I think this is going to dissipate over time, maybe more quickly than more slowly, but I think that's the history. And the Chamber of Commerce case was just one of a string of cases involving rulemaking by the SEC where the DC Circuit has said, "We're overturning your rule."

WT: So I think we've covered most of the highlights that we wanted to cover, but if I've missed something, I'd like to be sure and give you a chance to bring it up. Otherwise, maybe we should just – you can see the list that we had here – but otherwise we can just move on and fairly quickly cover your post-Fidelity career.

ER: I think we've covered a lot of topics.

WT: Okay. Well then, so you left in 2008, and then you became professor of law here at BU?

ER: Technically, lecturer in law. I'm not on the tenure track.

WT: Oh, I see. Okay. So obviously, since then we've had the financial crisis. I don't know at what point in that 2008 period you left.

ER: I left just before, and people think that I saw something coming, but I didn't.

WT: That wasn't the motivation.

ER: Right.

WT: So what would you point to as being the most interesting, most crucial, most consequential elements of what we've seen from a regulatory perspective since that point?

ER: Oh, gee.

WT: I'd go down the list of issues so you can just deal with them individually, but I'd probably miss my plane.

ER: Well, I think Dodd-Frank, obviously, but Dodd-Frank itself is this huge compilation of various laws, almost all of which have little to do with mutual funds. But I think that what we find ourselves today in is a regulatory regime where the SEC has lost authority that it's traditionally had over all areas of its regulatory powers, including mutual funds, because of the creation of this interagency Financial Stability Oversight Council. And when you look at the representatives, you can see that the banking regulators outnumber the SEC. So I think it's an unhealthy construct from the outset, and it has had the not surprising impact of directing much of the attention outside of the banking world and onto others like mutual funds and insurance companies.

And so I think when you look at what the SEC is doing with regard to mutual funds, I think they're playing defense. Sometimes they're trying to act preemptively to get out in front of the FSOC. And again, I think it's unhealthy for that to be happening when mutual funds had little or nothing to do with the financial crisis in 2008.

WT: And the impetus seems to be to try and treat them in a bank-like fashion in terms of possibly assigning FSOC status –

ER: Right. Yes.

WT: – implementing risk management oversight and that sort of thing.

ER: Yes. So the SEC, for its part, is doing things like imposing new rules governing the liquidity of mutual funds. Well, we've never really had problems of liquidity anyway with mutual funds, but now they have more complicated rules governing liquidity. Now we have a new set of proposals on leverage. I happen to think it's a good idea to look at and limit leverage within mutual funds, but I don't think it's a good idea that we're doing it because of some anticipated systemic risk problem, and I don't think it is that. It's simply a matter of investor protection. So this will take years to play out, and perhaps this is an area that Congress will go back and revisit and put in place some other guardrails so that the FSOC might look more closely at banks rather than non-banks.

WT: So just to wrap up, you've had a career that spanned the SEC, private practice, being within Fidelity.

ER: And here.

WT: And here. So you've seen the industry from all kinds of angles. What do you take away from that variety of experience? Have you really found that each of those perspectives offers you a unique perspective?

ER: Yes. And I've been very fortunate. I think that, obviously, everyone has to make his or her own choice about career path, and I think each step of the way, people said, "Gee, why are you leaving?" the SEC or Debevoise or Fidelity, because, "Gee, this is really a great place to be." And my answer is, yes, it is a great place to be and I'm very fortunate and very grateful that I had an opportunity to spend part of my career here. But I think that I'm also fortunate that I've been able to do work as a lawyer in different settings, because I think each one does open you up to a new set of experiences. And for those who feel comfortable picking up and changing careers, I'd encourage people to do so.

WT: All right. Well, thank you very much. This has been a very good interview, and it looks like it's almost two and a half hours long. So you were wondering about how to go ninety minutes. It seems like it's very possible indeed. So once again, thanks very much.

ER: Thanks very much.

[End of interview]